IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

WP(C).No. 31117 of 2004(D)

PETITIONER:

N.SADANANDA SWAMY, MANGALATHU VEEDU,
ADINADU SOUTH, KATTIKKADAVU P.O.
KARUNGAPPALLY, KOLLAM.

BY ADV. SRI.N.DHARMADAN (SR.)
SMT.R.RANJINI

RESPONDENTS:
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1. **UNION OF INDIA, REP. BY THE SECRETARY**
TO THE GOVERNMENT OF INDIA, HOME AFFAIRS,
GIRISH BHAVAN, MANTRALAYA, NEW DELHI.

2. **THE STATE OF KERALA, REP. BY THE SPECIAL**
SECRETARY TO THE GOVERNMENT OF KERALA,, GENERAL
ADMINISTRATION (FFP B) DEPARTMENT, SECRTARIAT,
THIRUVANANTHAPURAM.

BY ADV. SRI.V.K.MOHAMMED YOUSUF, ADDL.CGSC
GOVERNMENT PLEADER SRI.V.T.K.MOHANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.31117/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE JUDGMENT IN WP(C) 19925/03 DT. 7.4.04 OF THIS HONOURABLE COURT.

EXT.P2:- COPY OF THE LETTER NO.N0.38593/03 DT. 0.7.04 BY DIST. COLLECTOR.

EXT.P3:- COPY OF THE LETTER DT.12.7.04 ALONG WITH DOCUMENTS BY PETITIONER TO DIST.COLLECTOR.

EXT.P4:- COPY OF THE ORDER NO.52658/FFP A3/2004/GAD DT. 17.9.04 BY 2ND RESPONDENT.

EXT.P5:- COPY OF THE NARC (ORDER) NO.G1-4317/87/Q DT. 5.11.87BY SUPERINTENDENT OF POLICE.

EXT.P6:- COPY OF THE NARD (ORDER)DT. 28.10.87 ISSUED BY JUDL.1 CLASS MAGISTRATE, KARUNAGAPPALLY.

EXT.P7:- COPY OF THE CERTIFICATE ISSUED BY SRI.V.K.KARUNAKARAN TO PETITIONER DT. 24.10.87.

EXT.P8:- COPY OF THE CERTIFICATE ISSUED BY SRI.R.KARUNAKARAN PILLAI TO PETITIONER DT. 25.10.87.

EXT.P9:- COPY OF THE LETTER DT. 9.12.2000 BY SRI.MARANGATTU PADMANABHAN.

EXT.P10:- COPY OF THE (RELEVANT PORTION) MINUTES DT. 28.3.2000 BY DIST.COLLECTOR.

EXT.P11:- COPY OF THE AFFIDAVIT DT. 14.9.04 BY SMT. KOUSALIA, W/O. V.K.KARUNAKARAN.

EXT.R1:- COPY OF THE LETTER NO.52658/FFP.A3/2004/GAD DT. 17.9.04.

EXT.R2(a):- COPY OF THE CR.NO. N2-38593/03 DT. 13.9.04.

/TRUE COPY/

P.A. TO JUDGE

tss

T.R. Ramachandran Nair, J.

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W.P.(C).NO.31117 of 2004-D

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Dated this the 8th day of August, 2007

JUDGMENT

The grievance raised in this writ petition relates to the refusal to sanction Freedom Fighters' Pension to the petitioner both under the Central and the State Schemes. The petitioner had approached this court on an earlier occasion in Writ Petition No.19925/2003 and by Ext.P1 judgment, this court after finding in favour of the petitioner on certain aspects, directed the second respondent to reconsider the matter after holding fresh enquiries in respect of two matters. But even after the said exercise, the petitioner was denied the benefit of the grant of pension under the Kerala Freedom Fighters' Pension Rules and the Central Scheme by Ext.P4.

2. The petitioner is a native of Karunagappally and according to him, he had participated in various movements relating to freedom struggle from 1940 onwards. He had actively participated in the Quit India Movement and was an under trial prisoner in Kollam Kasba Police Station from 2.2.1942 to 10.8.1942. He had also remained underground for more than six months from 10.8.1942 to 16.6.1943 when he was made an accused in C.C. No.61/1118.

3. In the judgment Ext.P1, reported in 2004 (2) KLT SN page 76 (case No.92)) there were specific directions to the second respondent to reconsider the matter after holding fresh enquiries. Paragraphs 8 and 9 of Ext.P1 judgment which are relevant are extracted below:

> "8. The State Government's counter affidavit does not refer specifically to the abscondence certificate issued by Shri R. Karunakaran Pillai. A specific reference is made only to such certificate issued by Sri V.K.Karunakaran. The reason that there has been inflow of bogus certificates and the District Advisory Committee Resolution dated 4.2.1994 not to accept Sri V.K. Karunakaran's certificate hereafter cannot be a good reason. Further reason that the genuineness of the certificate could not be verified due to the death of the certifier is also in my view is not a good reason since even now it is possible to have such a verification by referring the same to close legal heirs of Shri V.K. Karunakaran.
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> 9. Having regard to the rival submissions made at the bar and in view of the observations made, I feel that the petitioner's case deserves a second look. Accordingly, there will be a direction to the second respondent to reconsider the matter after holding fresh enquiries in the context of genuineness of Ext.P5 abscondence certificate issued by Sri V.K. Karunakaran. The acceptability of Ext.P5(a) issued by Sri R. Karunakaran Pillai also be reconsidered by the second respondent in the light of Sri R. Karunakaran Pillai's claim that he is an authorised certifier as contained in Ext.P5(a). The petitioner is permitted to produce fresh documents including certificates or declarations by family members of Sri V.K. Karunakaran so as to affirm the genuinness of Ext.P5 certificate. The second respondent shall complete the enquiry and take a final decision within a maximum period of three months from the date of production of a copy of the judgment. If the enquiry reveals that Ext.P5 is a genuine certificate and Shri R. Karunakaran Pillai, the author of Ext.P5(a) is an approved certifier, the second respondent shall forward the necessary recommendations for the petitioner's application for pension under the SSS Scheme so as to facilitate

> award of that pension to the petitioner at the earliest. The first respondent shall also favourably consider the petitioner's application for State pension in case the result of the fresh enquiry is in favour of the petitioner."

The specific issue which was relegated back was regarding the Personal Knowledge Certificate issued by Shri V.K. Karunakaran. To show the genuineness of the certificate, the petitioner was permitted to produce fresh documents including certificates or declarations by family members of Shri V.K. Karunakaran. It was also directed that the certificate issued by one Shri R. Karunakaran Pillai shall also be considered along with the certificate issued by Shri V.K. Karunakaran.

4. The petitioner has come up again since the claim was rejected as per Ext.P4. A reading of Ext.P4 shows that the same was rejected mainly for the reason that the jail records of certifiers have not been produced by the applicant, that the enquiry done by the District Collector reveals that the certificate of Shri V.K. Karunakaran is not genuine, that the declaration of the widow of Shri V.K. Karunakaran is a fabricated one. In regard to the claim for pension under the S.S.S. Pension Scheme, in Ext.P4 it has been held that the N.A.R.C. is not found to be acceptable and hence the application is not being recommended to the Government of India. The findings rendered above, are challenged in this writ petition.

5. Shri N. Dharmadan, learned Senior counsel appearing for the petitioner contended that the respondents were bound by the directions contained in Ext.P1 judgment and the findings thereon, and going by the reasons stated in Ext.P4, the very same reasons which were set aside by this court in Ext.P1 judgment, have again been reiterated. It is contended that the finding regarding the eligibility of certifiers cannot be disputed in the light of the findings contained in Ext.P1 as well as Ext.P3 letter issued by the Government stating that the certificate of Shri V.K. Karunakaran is acceptable and in view of the Ext.P3(5) judgment of a Division Bench and that of a learned Single Judge in O.P. No. 10501/1997 (Ext.P3(7) and O.P.No.9136/1999 (Ext.P3(8)) wherein also the certificates issued by the very same certifier have been given due recognition. It is further pointed out that Ext.P6 is the N.A.R.C. issued by the Judicial First Class Magistrate' Court, Karunagappally and Ext.P10 is the recommendation by the District Advisory Committee recommending the petitioner's application for pension and none of them have been considered on merits. Ext.P11 produced herein is the affidavit by Smt. Kousalia, widow of late Shri V.K. Karunakaran, stating that the letter produced by the petitioner before the District Collector dated 8.7.2004 is a genuine one and duly signed by her. The above letter is produced in this writ petition as Ext.P3(3) which shows that the certifier

Shri V.K. Karunakaran had given the certificate in his own signature. In the light of the above, it is contended that the finding that the certificate issued by Shri V.K. Karunakaran is not genuine, is not correct. It was pointed out that the applicant had proved his claim for grant of pension.

6. In Ext.P4, emphasis is made on the non-acceptability of certificates of Shri V.K. Karunakaran and Shri R. Karunakaran Pillai on the ground that their jail records have not been produced and hence they are not acceptable. Going by the certificates issued by Shri V.K. Karunakaran and Shri R. Karunakaran Pillai, it is evident that both of them are recipients of 'Thamrapathra' and Central Freedom Fighters' Pension which is evident from Exts.P7 and P8 certificates issued by them. The details of imprisonment as given in them shows that Shri V.K. Karunakaran had suffered jail imprisonment for more than five years during different periods and Shri R. Karunakaran Pillai had suffered imprisonment for more than two years for different periods. It is evident that on the basis of their sufferings that they have been awarded 'Thamrapathra' and have been granted Central Freedom Fighters' Pension. Therefore, as regards those certifiers, neither the State Government nor the Central Government was in doubt about the eligibility and about their period of imprisonment. When such competent persons have given certificates, it is not proper to saddle

responsibility on the petitioner to produce their jail records as these are matters within the knowledge of the Government itself. The respondents have no case that they are not freedom fighters who have no qualification to issue such certificates. It is clear from Ext.P3(4) letter dated 30.3.1984 issued by the Commissioner and Secretary to Government, General Administration Department, Trivandrum, to the District Collector, Alappuzha that Shri V.K. Karunakaran has suffered imprisonment for more than five years. Hence, the certificate issued by him is acceptable. Therefore, his competency cannot be disputed at all. In Ext.P3(5) judgment of the Division Bench also, their Lordships rejected the contention therein that the certificate issued by Shri V.K. Karunakaran cannot be accepted. Reference is made regarding the acceptability of his certificates, in Ext.P3 (7) judgment in O.P.No.10501/1997 and in Ext.P3(8) judgment in O.P.No.9136/1999. In fact, in the above judgment, this court was pleased to direct the authority to grant pension to the petitioner therein as the certificate issued by Shri V.K. Karunakaran was found unobjectionable. In spite of these, the respondents have again reiterated their stand in the earlier order to reject the application of the petitioner.

7. No reasons have been stated as to why those binding precedents are not acceptable. Therefore, plainly the reason that the certificate issued

by the certifier Shri V.K. Karunakaran is not acceptable for want of his jail records, is not correct. Apart from the same, the reason stated to reject the certificate of Shri V.K. Karunakaran is that the declaration of Smt. Kousalya, viz., Ext.P3(3) herein is a fabricated one and therefore it is not acceptable. Apart from merely stating that it is found to be fabricated, no other reliable material as to the grounds in support of their conclusion, have been stated in Ext.P4. What are the enquiries made by the District Collector, is not evident from the same.

8. In this connection, a reference to the stand taken in the counter affidavit is necessary. Along with the counter affidavit even though Ext.R2 (a) report of the District Collector has been produced, therein also the only statement is that "the declaration of Smt. Kousalya regarding the genuinity of abscondence certificate of Shri V.K. Karunakaran is not issued by herself and reported to be fabricated one." As to the source of the said information, nothing is mentioned therein also. It is for this reason alone, the certificate has been rejected. The petitioner has produced herein Ext.P11 affidavit of Smt. Kousalya, the widow of late V.K. Karunakaran, wherein she has clearly stated that she is aware of the details of the certificate issued by her late husband in favour of the petitioner to prove his eligibility for Freedom Fighters' Pension. She has also clearly stated that Ext.P3(3) dated 8.7.2004

has been duly signed by her and given to the petitioner and that it was written by her daughter in her presence. It is also stated that nobody from the Collectorate came to her to verify the genuineness of the above letter and that the said letter is not a fabricated false document and it discloses the true fact. The contents of the affidavit have not been disputed in the counter affidavit filed by the second respondent and the facts stated therein have not been controverted also. Therefore, plainly the finding that the certificate issued by Shri V.K. Karunakaran cannot be accepted as it is a fabricated one, is not correct. Hence, it is evident and clear that the certificate issued by Shri V.K. Karunakaran is a genuine one and the same can be accepted as proof of the sufferings of the petitioner. Shri V.K. Karunakaran, in Ext.P7 certificate, has given the details of his jail term and stated that he was granted Central Freedom Fighters' Pension and is also a recipient of 'Thamrapathra'. That will evidently establish his credentials as only because of his jail terms, he was granted Central pension. This is so in the case of Shri R. Karunakaran Pillai also. He was also a recipient of 'Thamrapathra' and Central Freedom Fighters' Pension as evident from Ext.P8. When the certifiers have thus been granted Central pension as well as 'Thamrapathra' because of their sufferings, merely because the petitioner has not produced their jail records, the application cannot be rejected. All

the details regarding the certifiers have been clearly stated in the certificate and if the authorities had any doubt in those matters, that too could have been checked up with relevant records.

9. As regards the grant of Central Freedom Fighters' Pension is concerned, the same has been granted to them based on the recommendation of the State Government and when that was recommended, these details were clearly available with the Government. Hence, the said reason stated in Ext.P4 also falls to ground. The finding therefore that Shri R. Karunakaran Pillai, the author of Ext.P5(a) is an ineligible certifier as he has not suffered minimum imprisonment for two years, is also not correct. . But in this case, going by the details of Shri V.K. Karunakaran itself, it is clear that he is a person who has been in jail for more than five years which is certified by the Government itself in Ext.P3(4). Therefore, the said circumstance is also in favour of the petitioner.

10. I am fortified on this, by Ext.P1 judgment itself. Further, the issue regarding the acceptability of certificates issued by Shri V.K. Karunakaran and Shri R. Karunakaran Pillai, to prove the jail term of the petitioner, is concluded by Ext.P1 judgment. In paragraph 7 it has been clearly found that “the first reason mentioned in Ext.P8 is that the certifiers do not have minimum imprisonment period of one year. This reason cannot

be correct in the case of Shri V.K. Karunakaran or Shri R. Karunakaran Pillai going by Ext.P5 issued by Shri V.K. Karunakaran and Ext.P5(a) issued by Shri R. Karunakaran Pillai and going by Ext.P10 as well as Exts.P11 and P12 judgments of this court." In the light of the above finding, the said issue could not have been reconsidered at all and what was directed was only to find out the genuineness of the certificate issued by Shri V.K. Karunakaran and not about the qualification of the certifiers. The findings which have become final in Ext.P1, cannot be reiterated to reject the application of the petitioner.

11. Now one more aspect is also noticed, i.e., the certifier has not given the case number in the application. Actually, the said aspect is covered by Ext.P1 judgment in favour of the petitioner. In paragraph 7 of Ext.P1, a clear finding has been entered into on this aspect. His Lordship had entered a specific finding on the said aspect in the following terms:

> " The third specific reason mentioned in Ext.P8 as pointed out by the District Collector is that the certifiers do not mention the name of the movement or the case number in which the petitioner had undergone imprisonment or abscondence suffering. What the relevant rule requires is that in the case of underground sufferings abscondence certificates from prominent veteran freedom fighters along with non-availability of record certificate from the concerned authorities ought to be produced. The insistence that the certifiers themselves should give meticulous details such as case number etc. is adopting too technical an attitude which is unwarranted in view of the decision of the Supreme Court in Gurdial Singh's case

> (supra). The fourth reason mentioned in Ext.P8 is that the NARC does not say that C.C. No.61/1118 mentioned by the petitioner is related to freedom movement. As already indicated, NARC itself becomes necessary because of total absence of records. In such a situation taking a lenient view one can only go by the consistent pleading of the petitioner that the case relates to freedom movement – a case which can as well be accepted in the light of the abscondence certificate issued by the admitted Thamrapathra holders and also of Ext.P6 certificate issued by the President of the Freedom Fighters' Association who seems to belong to the very same taluk as the petitioner himself."

Therefore, that circumstance cannot now be taken against the petitioner as the said finding had attained finality. Therefore, for all the above reasons, I find that the conclusions arrived at in Ext.P4 as regards the eligibility of the petitioner for grant of Kerala Freedom Fighters' Pension are apparently wrong and unsustainable.

12. As already stated above, the certificates are acceptable and there is already the recommendation of the Advisory Committee also. In a similar circumstance in O.P. No.31822/2004 it was held by this court that the certificates produced by freedom fighters need not be scrutinised to such minute details. It was held as follows:

> "As held by this court and the Hon'ble Supreme Court in several decisions, certificates produced by freedom fighters need not be scrutinised to such minute details. Ext.P7 certifies that he was an accused in a criminal case. If the petitioner's husband was an accused in a criminal case there would certainly have been a warrant of arrest against him. Therefore, it can safely be presumed that his going underground was pursuant to an award of arrest warrant in

the above said criminal case. “

I find support for this view by the decision of the Hon'ble Supreme Court reported in **Gurdial Singh v. Union of India** ((2001) 8 SCC 8) wherein as regards the standard of proof required for the grant of Freedom Fighters' Pension, it was held in paragraph 7 as follows:

> “The standard of proof required in such cases, is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the Scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the Scheme. It should not be forgotten that the persons intended to be covered by the Scheme had suffered for the country about half a century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the Scheme. The case of the claimants under this Scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of “beyond reasonable doubt”. Once on the basis of the evidence it is probabilised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence.”

13. For all these reasons, Ext.P4 as far as it rejects the claim of the petitioner for pension under the Kerala Freedom Fighters' Pension Rules, is set aside and it is declared that he is eligible for pension under the Kerala Freedom Fighters' Pension Rules.

14. Regarding the claim for pension under the SSS Pension Scheme, in Ext.P4 the finding is that the certificates issued by Shri V.K. Karunakaran and Shri R. Karunakaran Pillai cannot be accepted. The said finding is also unsupportable in the light of the view taken by me earlier. The NARCs produced are valid also. Therefore, the application of the petitioner for SSS Pension is liable to be recommended by the State Government.

Therefore, the writ petition is allowed. Ext.P4 is quashed. It is declared that the petitioner is eligible for grant of pension under the Kerala Freedom Fighters' Pension Rules and the second respondent is directed to sanction the pension and disburse the amount within a period of two months from the date of receipt of a copy of this judgment. The second respondent is also directed to forward the application of the petitioner for grant of pension under the SSS Pension Scheme, to the first respondent with due recommendation along with the records and certificates, within the above period itself. The first respondent shall consider the same on merits and pass final orders within a further period of four months.

(T.R. Ramachandran Nair, Judge.)